

Executive Session

Chapter A96, CABLE TELEVISION FRANCHISE

GENERAL REFERENCES

Streets and sidewalks -- See Ch. 75.

§ A96-1. Purpose.

The Borough hereby grants to Comcast of Northwest New Jersey, LLC, renewal of its nonexclusive municipal consent to place in, upon, across, above, over and under highways, streets, alleys, sidewalks, easements, public ways and public places in the Borough poles, wires, cables, underground conduits, manholes and other television conductors, fixtures, apparatus and equipment as may be necessary for the construction, operation and maintenance in the Borough of a cable television and communications system.

§ A96-2. Definitions.

For the purpose of this ordinance, the following terms, phrases, words and their derivations shall have the meaning given herein. Such meaning or definition of terms is supplemental to those definitions of the Federal Communications Commission (FCC) rules and regulations, 47 C.F.R. Subsection 76.1 et seq., and the Cable Communications Policy Act, 47 U.S.C. Section 521 et seq., as amended, and the Cable Television Act, N.J.S.A. 48:5A-1 et seq., and shall in no way be construed to broaden, alter or conflict with the federal and state definitions:

ACT OR CABLE TELEVISION ACT -- Chapter 186 of the General Laws of New Jersey, and subsequent amendments thereto, N.J.S.A. 48:5A-1 et seq.

BASIC CABLE SERVICE -- Any service tier which includes the retransmission of local television broadcast signals as defined by the FCC.

BOARD OR BPU -- The Board of Public Utilities, State of New Jersey.

COMPANY -- The grantee of rights under this ordinance and is known as "Comcast of Northwest New Jersey, LLC."

FCC -- The Federal Communications Commission.

MUNICIPALITY OR BOROUGH -- The Borough of Washington, County of Warren, State of New Jersey.

OFFICE OR OCTV -- The Office of Cable Television of the Board.

§ A96-3. Statement of findings.

Public hearings conducted by the Borough concerning the renewal of municipal consent herein granted to the company were held after proper public notice pursuant to the terms and conditions of the Act and the regulations of the Board adopted pursuant thereto. Said hearings, having been fully open to the public, and the Borough, having received at said public hearings all comments regarding the qualifications of the company to receive this renewal of municipal consent, the Borough hereby finds that the company

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possesses the necessary legal, technical, character, financial and other qualifications and that the company's operating and construction arrangements are adequate and feasible.

§ A96-4. Duration of franchise.

A. The nonexclusive municipal consent granted herein shall expire 15 years from the date of expiration of the previous certificate of approval issued by the Board.

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B. In the event that the municipality shall find that the company has not substantially complied with the material terms and conditions of this ordinance, the municipality shall have the right to petition the OCTV for appropriate action, including modification and/or termination of the certificate of approval; provided, however, that the municipality shall first have given the company written notice of all alleged instances of noncompliance and an opportunity to cure same within 90 days of that notification.

§ A96-5. Franchise fee.

Pursuant to the terms and conditions of the Act, the company shall, during each year of operation under the consent granted herein, pay to the Borough 2% of the gross revenues from all recurring charges in the nature of subscription fees paid by subscribers for cable television reception service in the Borough or any higher amount required by the Act or otherwise allowable by law, whichever is greater.

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§ A96-6. Franchise territory.

The consent granted under this ordinance to the renewal of the franchise shall apply to the entirety of the Borough and any property subsequently annexed hereto.

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§ A96-7. Extension of service.

The Company shall be required to proffer service to any residence or business along any public right-of-way in the Primary Service Area, as set forth in the Company's Application. The Company's Line Extension Policy, as set forth in the Company's Application, shall govern any extension of plant beyond the Primary Service Area.

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The company shall be required to proffer service along any public right-of-way to any person's residence or business located in all areas of the franchise territory as described herein at tariffed rates for standard and nonstandard installations.

§ A96-8. Construction requirements.

A. Restoration. In the event that the company or its agents shall disturb any pavement, street surfaces, sidewalks, driveways, or other surface in the natural topography, the company shall, at its sole expense, restore and replace such places or things so disturbed in as good a condition as existed prior to the commencement of said work.

B. Relocation. If at any time during the period of this consent the municipality shall alter or change the grade of any street, alley or other way or place, the company, upon reasonable notice by the municipality, shall remove, relay or relocate its equipment at the expense of the company.

C. Temporary removal of cables. The company shall, upon request of the municipality at the company's expense, temporarily raise, lower, or remove its lines in order to facilitate the moving of buildings or machinery or in other like circumstances. Whenever the request is made by, for, or on behalf of private parties, the cost will be borne by those same parties.

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D. Removal or trimming of trees. During the exercise of its rights and privileges under this franchise, the company shall have the authority to trim trees upon and overhanging streets, alleys, sidewalks or other public places of the municipality so as to prevent the branches of such trees from coming in contact with the wires and cable of the company. Such trimming shall be only to the extent necessary to maintain proper clearance of the company's wire and cables.

§ A96-9. Customer service.

In providing services to its customers, the company shall comply with N.J.A.C. 14:18-1 et seq. and all applicable state and federal statutes and regulations. The company shall strive to meet or exceed all voluntary company and industry standards in the delivery of customer service and shall be prepared to report on it to the community upon written request of the Borough Manager or Clerk.

A. The company shall comply fully with all applicable state and federal statutes and regulations regarding credits for outages, the reporting of same to regulatory agencies and notification of same to customers.

B. The company shall comply fully with all applicable state and federal statutes and regulations regarding the availability of devices for the hearing impaired and the notification of same to customers.

C. The company shall use every effort to meet or exceed voluntary standards for telephone accessibility developed by the National Cable Television Association (NCTA). Those standards shall include, but not be limited to, the goal of answering 80% of incoming telephone calls within 30 seconds.

D. Nothing herein shall impair the right of any subscriber or the municipality to express any comment with respect to telephone accessibility to the complaint officer or impair the right of the complaint officer to take any action that is appropriate under law.

E. The company is permitted, but is not required to, charge a late fee consistent with applicable state and federal statutes and regulations.

§ A96-10. Municipal complaint officer.

The Office of Cable Television is hereby designed as the complaint officer for the municipality pursuant to N.J.S.A. 48:5A-26b. All complaints shall be received and processed in accordance with N.J.A.C. 14:17-6.5. The municipality shall have the right to request copies of records and reports pertaining to complaints by Borough customers from the OCTV.

§ A96-11. Local office.

A. During the term of this franchise, and any renewal thereof, the company shall maintain a local business office or agent for the purpose of receiving, investigating and resolving all complaints regarding the quality of service, equipment malfunctions and similar matters. Such local business office shall be open during normal business hours and in no event less than 9:00 a.m. to 5:00 p.m., Monday through Friday. Telephone access and response for such purposes as mentioned herein will be provided by the company's employees, representatives or agents 24 hours per day.

B. The telephone number and address of the local office shall be listed in applicable telephone directories and in correspondence from the company to the customer. The telephone number for the local office shall utilize an exchange that is a non-toll call for Borough residents.

§ A96-12. Performance bonds.

During the life of the franchise, the company shall give to the municipality a bond in the amount of \$25,000. Such bond shall be to insure the faithful performance of all undertakings of the company as represented in its application for municipal consent incorporated herein.

§ A96-13. Subscriber rates.

The rates of the company shall be subject to regulation as permitted by federal and state law.

§ A96-14. Public, educational and governmental access.

A. The company shall continue to provide residents with system-wide public access opportunities on a channel maintained by the company. Qualified individuals and organizations may utilize public access for the purpose of cablecasting noncommercial access programming in conformance with the company's published public access rules.

B. The company shall continue to provide system-wide leased or commercial access channel opportunities on a channel maintained by the company for the purpose of cablecasting commercial access programming in conformance with the company's guideline and applicable state and federal statutes and regulations.

C. The company shall take any steps that are necessary to ensure that the signals originated on the access channels are carried without material degradation, and with a signal whose quality is equal to that of the other channels that the company transmits.

§ A96-15. Commitments by company.

A. Company representatives shall appear at least once annually, upon reasonable written request of the Borough, at a public hearing of the governing body or before the Borough's Cable Television Advisory Committee, to discuss matters pertaining to the provision of cable service to residents of the Borough and other related issues as the Borough and company may see fit.

B. The company shall continue to provide a free standard cable installation with free basic service to each current and future elementary, middle, and secondary school classroom in the Borough provided the school is within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials and equipment, plus labor basis by the school requesting service. Monthly service charges shall be waived on all additional outlets.

The company shall provide one free non-networked internet connection and service via high-speed cable modem to the public library and all elementary, middle, and secondary school libraries and computer labs, connections are to be accessible for student use and cannot be restricted to administrative use. All facilities must be located within 200 feet of active cable distribution plant.

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Deleted: B. The company shall make every effort to deploy new or advanced technology and or services in the Borough that are commercially available, economically practicable, and technically feasible. That technology shall include but not be limited to: video-on-demand; digital video compression; advanced or high-definition television; digital audio services; digital television; high-speed Internet service via cable modem; and interactive program guides. ¶

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C. The company shall provide one free standard installation with free basic service to the Municipal Building and each Fire Department, First Aid Squad, Library, Special Improvement District (S.I. D.) main office and Public Works building, as well as any other municipal owned building that is located in or may be constructed within the Borough throughout the duration of this agreement, provided that each facility is located within 200 feet of active cable distribution plant. Each additional outlet installed, if any, shall be paid for on a materials and equipment, plus labor basis by the Municipality. Monthly service charges shall be waived on all additional outlets.

D. Within 12 months of the issuance of a Certificate of Approval (COA) by the Office of Cable Television, the company shall provide to the municipality a one-time grant of \$25,000 for access support.

§ A96-16. Emergency uses.

A. The company shall be required to fully comply with all applicable federal and state statutes and regulations rules and regulations governing the implementation, operation and testing of the emergency alert system (EAS).

B. The company shall in no way be held liable for any injury suffered by the municipality or any other person, during an emergency, if for any reason the municipality is unable to make full use of the cable television system as contemplated herein.

§ A96-17. Liability insurance.

The company shall at all times maintain a comprehensive general liability insurance policy with a single limit amount of \$1,000,000 covering liability for any death, personal injury, property damages or other liability arising out of its construction and operation of the cable television system and an excess liability (or "umbrella") policy in the amount of \$5,000,000.00

§ A96-18. Incorporation of application.

All of the commitments and statements contained in the application and any amendment thereto submitted in writing to the municipality by the company, except as modified herein, are binding upon the company as terms and conditions of this municipal consent. The application and any other relevant writings submitted by the company shall be considered a part of this ordinance and made a part hereof by reference as long as it does not conflict with state or federal law. All ordinances or parts of ordinances or other agreements between the Borough and the company that are in conflict with the provisions of this agreement are hereby declared invalid and superseded.

§ A96-19. Severability.

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court or federal or state agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and its validity or unconstitutionality shall not affect the validity of the remaining portions of the ordinance.

§ A96-20. When effective.

This ordinance shall take effect immediately upon issuance of a renewal certificate of approval from the BPU.

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In the event that the Borough determines that it is necessary and feasible for it to contract with the company for the purpose of providing two-way or interconnection services, the company shall be required to apply to the BPU for approval to enter into and establish the terms and conditions of such contract. All costs for such application to the BPU shall be borne by the Borough. ¶

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Should the Borough grant a franchise to construct, operate and maintain a cable television system to any other person, corporation or entity on terms materially less burdensome or more favorable than the terms contained herein, the company may substitute such language that is more favorable or less burdensome for the comparable provision of this ordinance subject to the provisions of N.J.A.C. 14:17-6.7. ¶

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